IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO. 422 Of 2005.

Date of decision: April 4, 2007.

Ajay Sharma. ……. Petitioner.

Vs.

State of H.P. & Ors. ……. Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the petitioner: Mr.Ramakant Sharma, Advocate.

For the respondents: Mr. M.S. Chandel, Advocazte General with Mr. R.M. Bisht, Deputy Advocate General.

Deepak Gupta, J.(Oral).

The complaint of the petitioner is that he was attacked by some persons on 16.11.2003 and FIR was lodged only under Sections 341,323 and 506 of the Indian Penal Code and not under Section 307 of the Indian Penal Code. According to the petitioner, the police was shielding the accused persons and was not taking any action against them. Hence, the investigation of the case be transferred to some other police station or agency.

In the reply filed by the State, it has been stated that FIR was lodged at the instance of Ashwani Kumar, brother of the petitioner in which, names of the assailants were not given. Thereafter, FIR 366 of 2003 was lodged initially under Sections 341,323 and 506 of the Indian Penal Code. However, after receipt

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Whether reporters of local Papers may be allowed to see the judgment? Yes

of the final opinion of the Medical Officer, Sections 325 and 307 of the Indian Penal Code were also incorporated in the said case.

The respondents have submitted that as per their investigation, there are contradictions in the case of the petitioner and finally the cancellation report was filed in the court concerned. This cancellation report is stated to have filed as far back as in May, 2004. Details of the so-called contradictions have been given. We have purposely not going into the merits of the case since it would only to the Magistrate concerned, who has to decide the same. It is quite obvious that before taking any action in the cancellation report, the Magistrate must have or at least should have issue the notice to the petitioner. The petitioner has not filed any rejoinder and we can presume that he must have been served in the said cancellation proceedings.

In view of the fact that the matter was taken up before the Magistrate concerned, we do not find any reason to interfere in the petition at this stage. The petition is dismissed.

CMP No.832 of 2005.

No order in view of the dismissal of the main writ petition.

(Deepak Gupta)
Judge.

April 4, 2007.
(Pds)

(Surinder Singh)
Judge.